

# FARMINGTON POLICE DEPARTMENT

## POLICY AND PROCEDURE



**Policy Number:**  
274-03      **Effective Date:**  
01/10/2017

**Subject:**  
Property Obtained by Legal Process

**Approved by:**

A handwritten signature in black ink, appearing to read "ST. D. HEBBE".

**Steven D. Hebbe, Chief of Police**



### **PURPOSE:**

To establish procedures governing the accounting and disposition of all property obtained as the result of a search warrant, abandoned property, recovered property or forfeiture.

### **POLICY:**

It is the policy of the Farmington Police Department to account for all property received by the Department through the delivery of all legal process services and to dispose of such property pursuant to the appropriate legal statutes.

### **PROCEDURE:**

#### **Objectives:**

All property seized by employees of the Farmington Police Department, pursuant to the delivery of legal process services, shall be recorded on the appropriate forms and placed into evidence. Such property will then be disposed of by the appropriate method described by law.

#### **Property Obtained By Legal Process:**

Items seized by search warrant are to be processed according to state law and Departmental procedures:

1. All property is listed by full description and serial numbers (if applicable);
2. All monies are accounted for by denominations and, if necessary, serial numbers;
3. All items are noted on Department evidence forms and processed according to Department Policy and Procedure;
4. All items are also noted on the return and inventory form of the search warrant.

All items, including vehicles, seized by authority of NMSA 30-31-34 are initially handled as indicated above. Those items which may be seized for forfeiture under the Controlled Substance Act are:

1. All controlled substances and controlled substance analogs;
2. All raw materials, products and equipment of any kind including firearms which are used or intended for use in the manufacturing, delivering, importing or exporting any controlled substances or controlled substance analogs;
3. All property which is used or intended for use as a container for property described in #1 and 2;
4. All conveyances which are used or intended for use to transport for the purpose of sale of property described in #1 and 2;
5. All books, records and research products and materials which are used or intended for use in violation of the Controlled Substances Act;
6. Money which is a fruit or instrumentality of the crime;
7. All drug paraphernalia as defined by Subsection W of Section 30-31-2 NMSA 1978.

All items seized by authority of NMSA 60-7A-4.1 are handled as indicated above. Those items which may be seized for forfeiture under the Liquor Control Act are:

1. Any conveyance used or intended to be used for the purpose of unlawful sale of alcoholic beverages;
2. Any money which is the fruit or instrumentality of the crime.

#### **Disposal of Seized, Found, and Recovered Property:**

The disposal of all seized, found and recovered property, except those items seized for forfeiture under the Controlled Substances Act, shall be pursuant to State law as defined in Sections 29-1-14 and 29-1-15 NMSA 1978.

#### **Disposal of Seized Property Under the Controlled Substance Act and the Imitation Controlled Substances Act**

In the cases of items seized for forfeiture under the Controlled Substances Act and the Imitation Controlled Substances Act, forfeiture proceedings must be initiated by the City Attorney or his designee for the City of Farmington as stated in Sections 30-31-34 through 30-31-37 NMSA 1978 and or Sections 30-31A-10 NMSA 1978.

#### **Disposal of Seized Property Under the Liquor Control Act:**

In the cases of items seized for forfeiture under the Liquor Control Act 60-7A-4.1, 60-7A-5 and 60-7A-6, the

forfeiture procedures are those that are set forth in Section 30-31-35 NMSA 1978 of the Controlled Substance Act.

**Disposal of Seized Property under the Assault and Battery Act:**

In the cases of vehicles seized for forfeiture under the provisions of 30-3-8.1, the forfeiture procedures are those that are set forth in Section 30-27-1 NMSA 1978 pursuant to Subsection A of this section.

**Disposal of Seized Property under the Weapons and Explosives Act:**

In the cases of handguns subject to seizure and forfeiture under the provisions of 30-7-2.3, the forfeiture procedures are those that are set forth in Section 31-27-1 NMSA 1978 pursuant to Subsection A of this section.

**Disposal of Seized Property under the Unauthorized Recording Act:**

In the cases of items seized for forfeiture under the provisions of 30-16B-8, the forfeiture procedures are those that are set forth in Section 31-27-1 NMSA 1978.

**Disposal of Seized Property under the Gambling Act:**

In the cases of items seized for forfeiture under the provisions of 30-19-10, the forfeiture procedures are those that are set forth in Section 31-27-1 NMSA 1978.

**Disposal of Seized Property under the Racketeering Act:**

In the cases of items seized for forfeiture under the provisions of 30-42-4, the forfeiture procedures are those that are set forth in Section 31-27-1 NMSA 1978 apply to property described in Subsection E of this section.

**Procedures for the Legal Disposition of Property:**

Pursuant to Section 29-1-14 NMSA 1978, all personal property having a fair market value greater than fifty dollars (\$50) that has been in the possession of the Farmington Police Department for more than ninety days shall be sold at public sale. This does not include property that has been claimed by the true owner, is still necessary for use in court, or may be needed for any public purpose. Firearms designated for sale must be sold only to licensed dealers or licensed collectors as defined by State Law.

**Notice of Sale:**

Any public sale of seized, found, or recovered property must be advertised to the public by publishing a notice of the sale once each week for two successive weeks. The notice is to contain a brief description of the personal property to be sold, the time and place of the sale and the name of any purported owners, if known. If, prior to the sale, the true owner identifies the property to be sold and offers proof of identity and ownership, the property shall be returned to the true owner. Ninety days after found property is turned over to the Department, if the owner has not been identified or claimed the property and a "hold" has not been placed on the property by an officer, the finder may sign a Waiver of Responsibility and take possession of the found property.

**Destruction of Property:**

Any unclaimed personal property having a fair market value equal to or less than fifty dollars (\$50) and is no

longer necessary for use in court, any personal property offered but not sold at public sale, any alcoholic beverage that has been unclaimed or is not needed for use in court, or any deadly weapons, poisons, controlled substances or other contraband lawfully seized as evidence, may be destroyed, except as otherwise provided by order of the district court upon ex parte application without notice.. All of these listed items must have been in the possession of the Farmington Police Department for more than ninety days.

**Removal from Inventory Record:**

All personal property sold at public sale, claimed by the true owner, destroyed or otherwise disposed of, shall be removed from the inventory record of the Farmington Police Department.

**Proceeds of Sale:**

Any proceeds from the public sale of unclaimed personal property shall be paid to the General Fund of the City of Farmington as stated in Section 29-1-15- NMSA 1978.

**Forfeiture of Items Seized Under the Controlled Substances Act:**

Forfeiture proceedings initiated by the City Attorney or his designee must comply with Subsection D, Section 30-31-35 NMSA 1978 and the Rules of Civil Procedure for the District Courts of New Mexico. These proceedings must be initiated no later than thirty days after seizure.

**Forfeiture of Items Seized Under the Liquor Control Act:**

Forfeiture proceedings for items seized under the Liquor Control Act are governed by the same rules as those stated above for the forfeiture of items seized under the Controlled Substance Act.

**Disposal of Forfeited Property:**

Any property forfeited, with the exception of contraband, pursuant to laws that specifically apply the Forfeiture Act shall be delivered to the state treasurer for disposition at a public auction, and all proceeds deposited into the state's general fund.